



King County

Department of
Natural Resources and Parks
Director's Office
King Street Center
201 S Jackson St, Suite 700
Seattle, WA 98104-3855

August 12, 2019

Chris Hladick
Regional Administrator
EPA Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Re: East Waterway Operable Unit of the Harbor Island Superfund Site

Dear Mr. Hladick:

Thank you for meeting with representatives of King County (County) along with representatives of the Port of Seattle (Port) and City of Seattle (City) on May 29, 2019, to discuss how finality can best be achieved for the East Waterway Operable Unit of the Harbor Island Superfund Site (EWW Site or Site). The County appreciates the time and effort EPA has taken to consider this issue, including its preparation of the "Sediment Management Standards Statement" (EWW Statement) sent to the parties on June 20. This letter follows up on issues discussed at the meeting. Because the EWW Statement materially differs from what we heard at the meeting, this letter also provides comments on the EWW Statement.

As discussed at the May 29 meeting, all available evidence demonstrates that natural background-based cleanup levels will ultimately not be achievable for the EWW Site. Incoming upstream sediment concentrations both today and predicted for the future are higher than natural background-based levels. In addition, some sediment must be left in place to protect existing infrastructure, and the large container ships using the waterway churn up sediment even without local source contribution, such that post-cleanup sediment concentrations will remain above natural background-based levels regardless of the remedy selected. Modeling performed for the Site and approved by the Superfund site team predicts that implementation of the most aggressive remedy technically practicable plus completion of comprehensive source control efforts will only achieve a level of 57 ppb PCBs. While that is in itself a low level, it does not begin to approach the natural background-based cleanup level of 2 ppb PCBs.

Because all available evidence shows that natural background based cleanup levels will not be met for the EWW Site, the County joined the Port at the May 29 meeting in requesting that a Technical Impracticability (TI) waiver be incorporated in the selected remedy. Incorporating a TI waiver would not affect which remedy is selected by EPA, undermine the cleanup performed,

or the level of protection achieved. There are considerable public benefits to issuing a TI waiver, upfront, as doing so would 1) ensure the public is made aware of the very real limitations on achieving cleanup standards for this Site, 2) ensure the public agencies responsible for cleanup (which include the United States)¹ are investing public funds where they can have the greatest environmental and public health impact, and 3) facilitate an agreement to perform cleanup by providing a clear estimate of the cost to achieve the cleanup goals.

EPA Region 10 staff dismissed the approach of issuing a TI waiver upfront, but outlined an alternate approach for achieving finality at the May 29 meeting. Cami Grandinetti, Regional Cleanup Branch Manager, acknowledged that the PCB cleanup level of 2 ppb is not likely to be achieved for this Site. She stated that EPA intends to rely on the State of Washington's allowance for upwardly adjusting the PCB cleanup level to a regional background value, which could ultimately allow for closure of the Site. Were a regional background value not set or met following implementation of the selected remedy (plus comprehensive source control efforts), EPA would at that time issue a TI waiver in order to achieve finality.

We were disappointed that EPA's subsequent written description of this approach (the EWW Statement) did not match this prior verbal explanation. Our understanding was that EPA was going to draft language that would clearly lay out how the natural background-based cleanup levels would be revised so that the public understood exactly how this process would unfold and what the outcome would be. In particular, we were expecting language that articulated 1) that natural background-based levels could not be met in this urban waterway, 2) why EPA would only temporarily adopt natural background-based cleanup levels, and 3) how EPA would revise them upon completion of the active remedy. Not only does the EWW Statement declare that "it is presently expected" that cleanup standards will be met following cleanup, it leaves open to a future unspecified date any actual determination on finality — which poses considerable risk that parties would be required to perform additional remedial actions at some unspecified point in the future, many decades from now. While the County appreciates EPA's consideration of how to achieve finality for this Site, we do not agree that waiting decades to determine whether cleanup levels can practicably be met is a viable closure approach, when we know now they cannot. Not only does the public continue to be misled, there is no well-defined endpoint for closure.

In conjunction with the Port, the County respectfully requests that EPA reconsider incorporating a TI waiver in its remedy decision, as the clearest and most transparent approach to achieving finality for the EWW Site.

In the County's view, the best alternative approach to issuing a TI waiver, upfront, would be for EPA to temporarily adopt the modeling prediction of 57 ppb PCBs as a surrogate for regional background, by setting this as an interim cleanup level until regional background can formally be established following implementation of the remedy.

¹ The United States is implicated through the Department of Defense, Coast Guard, and Postal Service. In particular, the United States operated the Naval Industrial Reserve Shipyard along the East Waterway on Harbor Island in the 1940s and 1950s, where destroyers and destroyer tenders (C-3 hulls) were constructed and repaired.

If EPA chooses to proceed otherwise, the County requests at minimum that EPA revise its written alternate approach consistent with its May 29 description and the County's stated concerns above, in order to reflect that:

- The available evidence shows that natural background-based cleanup levels will not be met for the EWW Site.
- Once the active remedy plus identified source control sufficiency actions have been completed, and a defined period of post-construction monitoring has determined that results are consistent with modeled expectations, the implementation of the remedy will be complete.² Closure at that point will be achieved through one of two ways: (1) an upward adjustment to the achieved Site concentrations, formally set as regional background, or (2) issuance of a TI waiver.

The County has helped fund the EWW Site investigation and anticipates being signatory to a consent decree as a performing party to implement the remedy. The County wishes to help implement the most protective cleanup technically practicable, and to expedite cleanup to the greatest degree feasible in order to address the real threats posed to human health and the environment sooner rather than later. We offer our comments to help best achieve these mutually-desirable goals.

Thank you for your time and attention to this matter.

Sincerely,



Christie True
Director

cc: Richard Mednick, EPA Office of Regional Counsel
Shawn Blocker, EPA Region 10
Ravi Sanga, EPA Region 10
Elizabeth Black, Port of Seattle
Elizabeth Leavitt, Port of Seattle
Kristie Elliott, King County Prosecuting Attorney's Office
Tad Shimazu, Seattle City Attorney's Office
Mark Isaacson, King County Department of Natural Resources and Parks (DNRP)
Debra Williston, King County DNRP
Jeff Stern, King County DNRP
Pete Rude, Seattle Public Utilities

² Source control would also continue under other authorities, beyond the source control sufficiency determination for this Site.

